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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/266,202 03/10/99 REITZ

H N19.12-0024

MM42/0105
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EXAMINER

LEE, K

ART UNIT

PAPER NUMBER

2832

DATE MAILED: 01/05/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/266,202

Applicant(s)

Reitz et al.

Examiner

Richard K. Lee

Group Art Unit

2832



☒ Responsive to communication(s) filed on Sep 24, 1999

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 35 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire three month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claim

☒ Claim(s) 1-9 is/are pending in the application

Of the above, claim(s) _____ is/are withdrawn from consideration

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-9 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☒ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☒ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 2

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

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DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 4-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 4 recites “no particles have a diameter greater than about four times the average diameter of the collection of particles.” This is indefinite. One can not determine what the “about four times the average diameter” would be, in conjunction with “less than about 95 nm” in claim 1.

Claim 5 recites ““no particles have a diameter greater than about three times the average diameter of the collection of particles.” This is indefinite for the same reason as stated above.

Claim 6 recites “at least about 95%of the particles.” This is indefinite since, it does not provide any range of specific particle percentages. *Amgen v. Chugai Pharmaceutical Co. Ltd.*, 927 F.2d 1200, 18 USPQ2d 1016 (Fed. Cir. 1991). Further, in conjunction with the limitation “less than about 95 nm” in claim 1, one can not determine what the particles sizes having “at least about 95 percent of the particles having a diameter greater than about 40 percent of the average diameter and less than about 160 percent of the average diameter” would be.

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Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

4. Claims 1-9 are rejected under 35 U.S.C. 102(e) as being anticipated by Ito et al.

(5,699,035). Ito et al. teaches crystalline zinc oxide particles having an average diameter "from about 10 nm to about 300nm" (col. 2, lines 47-48). Regarding claims 7-9, Ito et al. discloses a non-ohmic zinc oxide varistor.

Conclusion

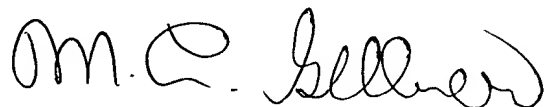
5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Iga et al. (5,770,113) discloses a zinc oxide varistor.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richard Lee whose telephone number is (703) 306-9060. The examiner can normally be reached on Monday to Friday from 6:30 A.M. to 3:00 P.M.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0956.

RKL

12/28/99



Michael L. Gaffner
Senior Patent Examiner
Art Unit 2832